

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA

VS.

**JERRY EDWARD HOLBROOK,
Movant.**

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**NO. 3:06-CR-0069-D(01)
NO. 3:08-CV-1161-D**

ORDER OF THE COURT ON THE FOREGOING RECOMMENDATION

Considering the record in this case and the above recommendation, and pursuant to Federal Rule of Appellate Procedure 22(b) and 28 U.S.C. § 2253 (c), the Court hereby finds and orders:


IFP STATUS:

- (X) the party appealing is GRANTED *in forma pauperis* status on appeal.
- () the party appealing is DENIED *in forma pauperis* status on appeal for the following reasons:
 - () the Court certifies, pursuant to Fed. R. App. P. 24(a) and 28 U.S.C. § 1915 (a)(3), that the appeal is not taken in good faith. In support of this finding, the Court adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation entered in this case on _____. Based upon the Magistrate Judge's findings and the District Court's Order filed on _____, this Court finds that the appeal presents no legal points of arguable merit and is therefore frivolous. *See Harkins v. Roberts*, 935 F. Supp. 871, 873 (S. D. Miss. 1996) (citing *Howard v. King*, 707 F. 2d 215, 219-20 (5th Cir. 1983)).
 - () the person appealing is not a pauper;
 - () the person appealing has not complied with the requirements of Rule 24 of the Federal Rules of Appellate Procedure and /or 28 U.S.C. § 1915(a)(1) as ordered by the Court. (See Notice of Deficiency and Order entered on _____).

COA:

- () a Certificate of Appealability is GRANTED on the following issues: _____
- (X) a Certificate of Appealability is DENIED. The Court hereby adopts and incorporates by reference the Magistrate Judge's Findings and Recommendation entered in this case on September 17, 2008, in support of its finding that Movant has failed to make a substantial showing of the denial of a federal constitutional right. *United States v. Garza*, 165 F.3d 312, 314 (5th Cir.), *cert. denied*, 120 S.Ct. 502 (1999).

SIGNED October 31, 2008.


SIDNEY A. FITZWATER
CHIEF JUDGE